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AB-807 Real estate transfer fees: recorded documents. (2015-2016)

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Assembly Bill No. 807

CHAPTER 634

An act to amend Sections 1098, 1098.5, and 1102.6e of the Civil Code, relating to real estate transfer fees.

[Approved by Governor October 08, 2015. Filed with Secretary of State October 08, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 807, Mark Stone. Real estate transfer fees: recorded documents.

Existing law defines a transfer fee as a fee payment requirement imposed in any covenant, restriction, or condition contained in any deed, contract, security instrument, or other document affecting the transfer or sale of real property that requires a fee be paid upon transfer of the real property, with specified exceptions. Existing law, with regard to a transfer fee imposed upon real property on or after January 1, 2008, requires the person or entity imposing the transfer fee, as a condition of payment of the fee, to record a specified document describing the transfer fee concurrently with the instrument creating the transfer fee requirement. Existing law requires these recorded documents to include information on the amount of the fee and actual dollar examples of the fee for a residential property, among other things. Existing law requires a transferor of residential real property subject to transfer fees to make a specified disclosure regarding those fees.

This bill would specify that the required information on the recorded document include the method for calculating the amount of the transfer fee, if not a flat amount or a percentage of the sales price, and include the actual dollar examples of the fee for a residential property if the amount of the fee is based on the price of the real property. The bill would also require the transferor of residential real property subject to transfer fees to make the specified disclosure regarding those fees if the recorded document describing the transfer fees has not already been provided. The bill would also clarify the definition of a transfer fee.

Existing law excludes from the definition of a transfer fee any fee reflected in a document recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that provides a prospective transferee notice of specified information, including the amount or method of calculation of the fee.

This bill would specify that the information shall be set forth in a single document and may not be incorporated by reference from any other document.

This bill would provide that a fee reflected in a document recorded against the property on or before December 31, 2007, that is not separate from any covenants, conditions, and restrictions, or that incorporates by reference from another document, constitutes a transfer fee for the purposes of requirements relating to these fees. The bill would make unenforceable a transfer fee recorded against the property on or before December 31, 2007, that complies with the provisions described above and that incorporates by reference from another document unless it is recorded against the property on or before December 31, 2016, in a single document that complies with the provisions described above.

This bill would also make a legislative finding that certain changes made by this bill are clarifying and declaratory of existing law.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1098 of the Civil Code is amended to read:

1098. (a) A "transfer fee" is any fee payment requirement imposed within a covenant, restriction, or condition contained in any deed, contract, security instrument, or other document affecting the transfer or sale of, or any interest in, real property that requires a fee be paid as a result of transfer of the real property. A transfer fee does not include any of the following:

- (1) Fees or taxes imposed by a governmental entity.
- (2) Fees pursuant to mechanics' liens.
- (3) Fees pursuant to court-ordered transfers, payments, or judgments.
- (4) Fees pursuant to property agreements in connection with a legal separation or dissolution of marriage.
- (5) Fees, charges, or payments in connection with the administration of estates or trusts pursuant to Division 7 (commencing with Section 7000), Division 8 (commencing with Section 13000), or Division 9 (commencing with Section 15000) of the Probate Code.
- (6) Fees, charges, or payments imposed by lenders or purchasers of loans, as these entities are described in subdivision (c) of Section 10232 of the Business and Professions Code.
- (7) Assessments, charges, penalties, or fees authorized by the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4) or by the Commercial and Industrial Common Interest Development Act (Part 5.3 (commencing with Section 6500) of Division 4).
- (8) Fees, charges, or payments for failing to comply with, or for transferring the real property prior to satisfying, an obligation to construct residential improvements on the real property.
- (9) (A) Any fee reflected in a document recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that substantially complies with subdivision (a) of Section 1098.5 by providing a prospective transferee notice of the following:
 - (i) Payment of a transfer fee is required.
 - (ii) The amount or method of calculation of the fee.
 - (iii) The date or circumstances under which the transfer fee payment requirement expires, if any.
 - (iv) The entity to which the fee will be paid.
 - (v) The general purposes for which the fee will be used.

(B) A fee reflected in a document recorded against the property on or before December 31, 2007, that is not separate from any covenants, conditions, and restrictions, or that incorporates by reference from another document, is a "transfer fee" for purposes of Section 1098.5. A transfer fee recorded against the property on or before December 31, 2007, that complies with subparagraph (A) and incorporates by reference from another document is unenforceable unless recorded against the property on or before December 31, 2016, in a single document that complies with subdivision (b) and with Section 1098.5.

(b) The information in paragraph (9) of subdivision (a) shall be set forth in a single document and shall not be incorporated by reference from any other document.

SEC. 2. Section 1098.5 of the Civil Code is amended to read:

1098.5. (a) For transfer fees, as defined in Section 1098, imposed prior to January 1, 2008, the receiver of the fee, as a condition of payment of the fee on or after January 1, 2009, shall record, on or before December 31, 2008, against the real property in the office of the county recorder for the county in which the real property is located a separate document that meets all of the following requirements:

- (1) The title of the document shall be "Payment of Transfer Fee Required" in at least 14-point boldface type.
- (2) The document shall include all of the following information:

(A) The names of all current owners of the real property subject to the transfer fee, and the legal description and assessor's parcel number for the affected real property.

(B) The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the fee.

(C) If the real property is residential property, actual dollar-cost examples of the fee for a home priced at two hundred fifty thousand dollars (\$250,000), five hundred thousand dollars (\$500,000), and seven hundred fifty thousand dollars (\$750,000).

(D) The date or circumstances under which the transfer fee payment requirement expires, if any.

(E) The purpose for which the funds from the fee will be used.

(F) The entity to which funds from the fee will be paid and specific contact information regarding where the funds are to be sent.

(G) The signature of the authorized representative of the entity to which funds from the fee will be paid.

(b) When a transfer fee, as defined in Section 1098, is imposed upon real property on or after January 1, 2008, the person or entity imposing the transfer fee, as a condition of payment of the fee, shall record in the office of the county recorder for the county in which the real property is located, concurrently with the instrument creating the transfer fee requirement, a separate document that meets all of the following requirements:

(1) The title of the document shall be "Payment of Transfer Fee Required" in at least 14-point boldface type.

(2) The document shall include all of the following information:

(A) The names of all current owners of the real property subject to the transfer fee, and the legal description and assessor's parcel number for the affected real property.

(B) The amount, if the fee is a flat amount, the percentage of the sales price constituting the cost of the fee, or the method for calculating the amount.

(C) If the real property is residential property and the amount of the fee is based on the price of the real property, actual dollar-cost examples of the fee for a home priced at two hundred fifty thousand dollars (\$250,000), five hundred thousand dollars (\$500,000), and seven hundred fifty thousand dollars (\$750,000).

(D) The date or circumstances under which the transfer fee payment requirement expires, if any.

(E) The purpose for which the funds from the fee will be used.

(F) The entity to which funds from the fee will be paid and specific contact information regarding where the funds are to be sent.

(G) The signature of the authorized representative of the entity to which funds from the fee will be paid.

(c) The recorder shall only be responsible for examining that the document required by subdivision (a) or (b) contains the information required by subparagraphs (A), (F), and (G) of paragraph (2) of subdivision (a) or (b). The recorder shall index the document under the names of the persons and entities identified in subparagraphs (A) and (F) of paragraph (2) of subdivision (a) or (b). The recorder shall not examine any other information contained in the document required by subdivision (a) or (b).

SEC. 3. Section 1102.6e of the Civil Code is amended to read:

1102.6e. If a property being transferred on or after January 1, 2008, is subject to a transfer fee, as defined in Section 1098, the transferor shall provide, at the same time as the transfer disclosure statement required pursuant to Section 1102.6 is provided if the document required by subdivision (b) of Section 1098.5 has not already been provided, an additional disclosure statement containing all of the following:

(a) Notice that payment of a transfer fee is required as a result of transfer of the property.

(b) The amount of the fee required for the asking price of the real property, if the amount of the fee is based on the price of the real property, and a description of how the fee is calculated.

(c) Notice that the final amount of the fee may be different if the fee is based upon a percentage of the final sale price.

(d) The entity to which funds from the fee will be paid.

(e) The purposes for which funds from the fee will be used.

(f) The date or circumstances under which the obligation to pay the transfer fee expires, if any.

SEC. 4. The Legislature finds and declares that the addition of subdivision (b) to Section 1098 of, and the amendments to Sections 1098.5 and 1102.6e of, the Civil Code made by this act are clarifying and declaratory of existing law.